

BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of)
MUR 6689)
Jim C. Walton)
John McCain 2008, Inc. and)
Joseph Schmuckler as treasurer)
McCain Victory 2008 and)
Lisa Lisker as treasurer)
McCain-Palin Compliance Fund, Inc.)
and Joseph Schmuckler as treasurer)

DISMISSAL AND
CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY
SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include without limitation an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances or, where the record indicates that no violation of the Act or underlying Commission regulations has occurred, to make no reason to believe findings. The Office of General Counsel has determined that MUR 6689 should not be referred to the Alternative Dispute Resolution Office.

For the reasons set forth below, the Office of General Counsel recommends that the Commission find no reason to believe that Respondent Jim C. Walton ("Walton") and

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1 Respondents John McCain 2008, Inc., Senator John McCain's 2008 presidential primary
2 committee, and Joseph Schmuckler in his official capacity as treasurer ("McCain 2008")
3 violated the Act. The Office of General Counsel also recommends that the Commission
4 exercise its prosecutorial discretion and dismiss MUR 6689 as to Respondents McCain
5 Victory 2008, a joint fundraising committee, and Lisa Lisker in her official capacity as
6 treasurer ("McCain Victory"), and Respondents McCain-Palin Compliance Fund, Inc. and
7 Joseph Schmuckler in his official capacity as treasurer ("GELAC").¹

8 The Complaint alleges that, during 2007 and 2008 (the "time period"), Walton
9 violated the biennial limit on contributions to federal candidates at 2 U.S.C. § 441a(a)(3).
10 Compl. at 1-2.² Specifically, the Complaint alleges that Walton contributed \$46,100 to
11 federal candidates. *Id.* at 2. The Complaint provides a chart listing contributions from
12 Walton to federal candidates, seemingly drawn on Commission records. Compl., Ex. A.
13 On that chart are two contributions from Walton to McCain 2008 totaling \$4,600 and two
14 contributions from Walton to GELAC totaling \$4,300.³ *Id.* As a consequence, according to
15 the Complaint, Walton exceeded the biennial limit of \$42,700 on contributions to federal
16 candidates by \$3,400. *Id.*

¹ Complaint filed: November 8, 2012.
Responses from Walton filed: November 8, 2012 and December 10, 2012. Response from McCain 2008
filed: November 28, 2012. No response was filed by McCain Victory, which appears to be inactive. GELAC
was not notified, since the facts and circumstances indicate that GELAC did not receive an excessive
contribution from Walton (*see* n 4, *infra*).

² During the time period, individuals could contribute \$42,700 to federal candidates and their
authorized committees and \$65,500 to party committees and other political committees. Price Index Increases
for Expenditure and Contribution Limitations, 72 Fed. Reg. 5294, 5295 (Feb. 5, 2007) ("Contribution Limit
Increases").

³ A major party candidate for president who receives public funding for the general election is
permitted to accept contributions designated for a general election legal and accounting compliance fund, or
GELAC, which is a special account used to pay legal and accounting expenses incurred in complying with
Federal law. *See* 11 C.F.R. § 9003.3(a)(1).

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1 Separately, with respect to the \$4,300 in contributions to GELAC, the Complaint
2 observes that GELAC contributions are subject to the Act's contribution limits, *see*
3 11 C.F.R. § 9003.3(a)(1)(i)(B), which were \$2,300 per individual per election during the
4 2008 election cycle. Compl. at 2. Therefore, the Complaint maintains that Walton appears
5 to have contributed almost twice the allowable amount to GELAC. *Id.* at 1-2; *see also*
6 Compl., Exh. A.

7 Walton maintains that he did not make excessive contributions. Walton states that
8 he made a contribution of \$2,300 to McCain 2008 in May 2008 and a \$4,300 contribution
9 to McCain Victory in August 2008. Walton Resp. at 1. Walton states that, when he made
10 the \$4,300 contribution to McCain Victory in August 2008, he instructed McCain Victory
11 to allocate \$2,000 of his contribution to the Republican National Committee and \$2,300 to
12 GELAC. *Id.* at 1; *see also* Attached August 7, 2008, Memorandum to McCain Victory.
13 Instead, in what appears to have been a processing error, on August 29, 2008, McCain
14 Victory allocated his contribution as follows: \$2,300 to McCain 2008 (the wrong amount
15 to an incorrect recipient) and \$2,000 to GELAC (the wrong amount to the correct recipient).
16 *Id.* at 1-2.

17 The transfer to McCain 2008, when aggregated with Walton's May 2008 \$2,300
18 contribution to McCain 2008, would have resulted in an excessive contribution to McCain
19 2008. Walton states, however, that McCain Victory subsequently reallocated the \$4,300
20 contribution correctly. Walton Resp. at 1. He notes that it appears that the Complaint may
21 have double-counted the single \$4,300 contribution to McCain's joint fundraising
22 committee, McCain Victory. *Id.* at 2. Walton further explains that, by subtracting the total

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1 of the two contributions initially misallocated by McCain Victory (\$4,300) from the
2 \$46,100 figure set forth in the Complaint, the total contributed by Walton to federal
3 candidates is \$41,800, which is within the \$42,700 limit. *Id.*; *see also* Compl., Ex. A.
4 Moreover, subtracting the \$2,000 initially distributed by McCain Victory to GELAC from
5 the \$4,300 figure cited in the Complaint leaves a total of \$2,300, the amount ultimately
6 distributed by McCain Victory to GELAC, which was within permissible limits. *Id.*

7 McCain 2008 confirms that it first received a contribution of \$2,300 from Walton in
8 May 2008 and that it received \$2,300 from Walton via McCain Victory on August 29,
9 2008. McCain 2008 Resp. at 1-2. McCain 2008 states, however, that it returned the second
10 \$2,300 contribution to McCain Victory on September 13, 2008, as disclosed on its 2008
11 October Quarterly Report and that McCain Victory subsequently reallocated Walton's
12 contribution as described above. *Id.* Therefore, McCain 2008 asserts that it did not accept
13 an excessive contribution from Walton. *Id.* Based on the facts presented, it appears that
14 Walton did not make excessive contributions as described in the Complaint. Therefore, the
15 Office of General Counsel recommends that the Commission find no reason to believe that
16 Jim C. Walton violated 2 U.S.C. § 441a(a)(3).⁴

17 The Office of General Counsel also recommends that the Commission find no
18 reason to believe that McCain 2008 accepted an excessive contribution, in violation of
19 2 U.S.C. § 441a(f), because it transferred the \$2,300 Walton contribution that had been

⁴ After reviewing GELAC's financial disclosure reports, the Office of General Counsel was unable to pinpoint whether GELAC transferred the original \$2,000 contribution back to McCain Victory. Given, however, that Walton contributed a total of \$4,300, not \$6,300, to McCain Victory during the time period, it appears likely that McCain Victory and GELAC unwound the initial erroneous transfer.

1 misallocated by McCain Victory back to that entity, which then complied with the donor's
2 intent.

3 With respect to McCain Victory, although it initially misreported the amounts and
4 one of the recipients of Walton's contributions, in violation of 2 U.S.C. § 434(b), it
5 corrected its errors and appears to have subsequently reported the transactions correctly.

6 Therefore, the Office of General Counsel recommends, in furtherance of the Commission's
7 priorities and relative to other matters pending on the Enforcement docket, that the

8 Commission exercise its prosecutorial discretion and dismiss this matter as to McCain
9 Victory, pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985). In addition, for the reasons
10 set forth *supra*, see n. 4, the Office of General Counsel recommends that the Commission

11 exercise its prosecutorial discretion and dismiss this matter as to GELAC, pursuant to

12 *Heckler v. Chaney*, 470 U.S. 821 (1985). Finally, the Office of General Counsel

13 recommends that the Commission approve the attached Factual and Legal Analyses and the
14 appropriate letters, and close the file.

15 RECOMMENDATIONS

- 16
- 17 1. Find no reason to believe that Jim C. Walton violated 2 U.S.C. § 441a(a)(3);
- 18
- 19 2. Find no reason to believe that John McCain 2008, Inc. and Joseph Schmuckler
- 20 in his official capacity as treasurer violated 2 U.S.C. § 441a(f);
- 21
- 22 3. Dismiss the allegation that McCain Victory 2008 and Lisa Lisker in her official
- 23 capacity as treasurer violated the Federal Election Campaign Act of 1971, as
- 24 amended, pursuant to the Commission's prosecutorial discretion;
- 25
- 26 4. Dismiss the allegation that McCain-Palin Compliance Fund, Inc. and Joseph
- 27 Schmuckler in his official capacity as treasure violated the Federal Election
- 28 Campaign Act of 1971, as amended, pursuant to the Commission's
- 29 prosecutorial discretion;
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5. Approve the attached Factual and Legal Analyses and the appropriate letters;
and

6. Close the file.

Anthony Herman
General Counsel

4/12/13
Date

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